No. 77-1108

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

LOUIS A. ANTAL,
Petitioner,

v.

W. A. ("TONY") BOYLE, GEORGE TITLER, JOHN OWENS, AND UNITED MINE WORKERS OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONER'S REPLY TO BRIEF OF RESPONDENT JOHN OWENS IN OPPOSITION

JOSEPH L. RAUH, JR.
JOHN SILARD
ELLIOTT C. LICHTMAN
Rauh, Silard and Lichtman
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Petitioner
Louis A. Antal

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1108

LOUIS A. ANTAL,

Petitioner,

v.

W. A. ("TONY") BOYLE, GEORGE TITLER, JOHN OWENS, AND UNITED MINE WORKERS OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONER'S REPLY TO BRIEF OF RESPONDENT JOHN OWENS IN OPPOSITION

The question posed by the Petition is whether the public policy of strict fiduciary accountability embodied in Section 501 of LMRDA will countenance a spendthrift provision in a union officer pension plan thwarting collection by a labor union of judgments against its former officers for large-scale breaches of fiduciary duty. Petitioner maintains that so strong a public policy cannot be so easily frustrated and that the majority decision of the Court of Appeals in this matter is contrary to LMRDA

as interpreted by other federal appellate courts. A Brief in Opposition has been filed by Respondent John Owens, the Union's former Secretary-Treasurer, to which only a short reply is required.[1]

1. Respondent Owens' assertion that Petitioner Antal lacks standing to bring this matter before the Court is without substance. Petitioner Antal was one of the original derivative plaintiffs who initiated these proceedings seeking to remedy the large-scale fiduciary breaches perpetrated by Respondent Boyle and his fellow officers, including Respondent Owens. Following the election defeat of these former officers, the Union assumed the posture of a plaintiff in these proceedings representing that it would carry out the responsibility for seeing the matter through. Regardless of the Union's realignment, Petitioner Antal remained a party to these proceedings in order to assure that the claims of fiduciary breach would be litigated to judgment and that satisfactory steps would be taken to assure that collection would occur.[2] Congress specifically approved such participation in § 501(b) by providing for the derivative conduct of proceedings involving union officer breaches of fiduciary duty where the union fails to prosecute the action. To bar Petitioner Antal's participation—especially now that the Union is

[1] Notably, no response has been submitted by the Union's former President, W.A. ("Tony") Boyle, who is the subject of the largest judgment as the primary defalcating fiduciary, nor by the other respondents.

[2] Counsel for Petitioner Antal and the other derivative plaintiffs never represented to the Court of Appeals incident to the proceedings in *Weaver* v. *UMWA*, 160 U.S. App. D.C. 314, 492 F.2d 580 CADC, 1973), that they would move to withdraw as parties incident to the Union's realignment as a plaintiff. Following the Union's realignment pursuant to the Court of Appeals' decision, Respondent Owens and his fellow defendants failed to contest the right of Petitioner Antal to remain as a derivative plaintiff for more than two years until after the entry of judgment on the merits, after which the District Court rejected their post-judgment motion as inappropriate under Rule 60(a), F.R.C.P.

not seeking review of the Court of Appeals' rejection of its judgment collection efforts—cannot be reconciled with Section 501.

2. Respondent Owens objects to the statement in the Petition that barring attachment of Respondents' pensions will, as stated by Chief Judge Bazelon in dissent, thwart satisfaction of the Union's judgment. None of the Respondents have denied that this will be the case. Respondent Owens artfully asserts a lack of record evidence in support of the proposition, but does not deny it or identify other assets on which the judgment could be executed. As noted above, Respondent Boyle has made no response whatever.

3. As set forth in the Petition, the Court of Appeals' decision is contrary to *Highway Truck Drivers and Helpers Local 107* v. *Cohen*, 284 F.2d 162 (C.A. 3, 1960), aff'g 182 F.Supp. 608 (E.D.Pa.) and *Johnson* v. *Nelson*, 325 F.2d 646 (C.A. 8, 1963), aff'g 212 F.Supp. 233 (D. Minn. 1963) and other decisions of the Second Circuit (see Petition pp. 5-6). Although Respondent Owens purports to distinguish *Highway Truck Drivers* and *Johnson*, he has completely ignored the portions of those opinions relevant here. Those decisions represent judicial disapproval of union action undermining strict fiduciary accountability whether or not such action is literally in the form of a "general exculpatory provision in the constitution and by-laws of . . . a labor organization or a general exculpatory resolution of a governing body . . ." In *Highway Truck Drivers*, for example, the Court refused to uphold a resolution for payment of legal expenses of officers accused of fiduciary breach. Even though the resolution was not literally "exculpatory" within § 501, the Court nevertheless held such payments void under the overriding LMRDA policy of strict fiduciary accountability.

4. After purporting to distinguish *Highway Truck Drivers* and *Johnson*, Respondent Owens (Opposition, pp.

5-6) then essentially repeats the argument of the majority of the Court below that the spendthrift provision here is not literally an exculpatory provision proscribed by Section 501. However, as we stated in our Petition (p. 4 n. 3), that argument is responsive to a straw man which has never been asserted. Instead of challenging the clause as an "exculpatory" provision within Section 501, the Union and Petitioner Antal have contended that enforcement of the clause contravenes the Federal policy of fiduciary accountability embodied in the statute.[3]

It is an established principle of trust law that spendthrift provisions will not be honored where their enforcement would be contrary to public policy. *American Security and Trust Co.* v. *Utley*, 127 U.S. App. D.C. 235, 382 F.2d 451, 453 (1967) (Burger, J.) The situations in which spendthrift provisions have been denied enforcement on public policy grounds have evolved on a case-by-case basis. In this case, where substantial judgments have been entered against the Union's former officers for large-scale fiduciary breach, this Court must assure that Congress' "plain intention . . . to hold officers and employees strictly responsible as fiduciaries . . . not be subverted by the use of indirect methods." *United States* v. *Silverman*, 430 F.2d 106, 113 (C.A. 2, 1974). Otherwise the frustration of § 501 which occurred in this case will become the general rule.

---

[3] Respondent Owens' suggestion (Opposition p. 8) that Petitioner seeks authority for the Union to invade the spendthrift provision for its own benefit to the detriment of innocent beneficiaries of the pension trust is fanciful. The limited exception sought to correct the harm done the Union by the former officers' fiduciary breach will in no way implicate the interests of other Union employees who may become judgment debtors in contexts not involving fiduciary breach.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted and the judgment of the Court of Appeals reversed.

Respectfully submitted,

JOSEPH L. RAUH, JR.
JOHN SILARD
ELLIOTT C. LICHTMAN
Rauh, Silard and Lichtman
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Petitioner
Louis A. Antal